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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY cm  
DEPUTY

NO. 37146-4-II

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON,

DIVISION II

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STATE OF WASHINGTON,

Respondent,

vs.

CLINTON ALLEN PRATHER,

Appellant.

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BRIEF OF RESPONDENT

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## **I. PROCEDURAL HISTORY**

The appellant was charged by information with ten counts stemming from an incident that occurred on July 28, 2007. Prior to trial, the appellant's trial counsel moved to suppress evidence found during a search of an apartment located at 900 N. 6<sup>th</sup> Street, Kelso Washington and during the execution of a search warrant on a Toyota MR2. After hearing the witnesses' testimony and the argument of the parties, the Honorable Judge Warne denied the motion.

Subsequently, an amended information was filed, removing two counts of unlawful possession of a firearm in the first degree. The appellant then proceeded to jury trial, the outcome of which is accurately stated by the appellant. A second trial was held to decide the remaining count of assault in the second degree charge committed against Joshua Bryant. The jury found the appellant guilty of this charge.

At sentencing, the appellant stipulated that his criminal history was as alleged by the State, but disputed other legal issues relevant to sentencing. After rejecting the appellant's arguments, and also denying the State's request for an exceptional sentence based on free crimes, the Honorable Judge Warne imposed a sentence of 156 months in prison. The instant appeal timely followed.

## **II. STATEMENT OF FACTS**

The State agrees with the facts as set forth by the appellant. When appropriate, this brief cites to particular facts in the record.

## **III. ISSUES PRESENTED**

1. Did the Trial Court Err by Denying a Motion to Suppress?
2. Was Trial Counsel Ineffective For Failing to Argue a Theory of Suppression Unsupported by the Law?
3. Did the Trial Court Err by Finding Convictions for Counts I and III Did Not Violate Double Jeopardy?
4. Did the Trial Court Err by Finding Counts I and III Were Not the Same Criminal Conduct?
5. Did the Trial Court Err by Counting the Appellant's Prior Conviction for Attempted Assault in the Second Degree as Two Points?
6. Did the Trial Court Err by Imposing a Potentially Ambiguous No-Contact Order?

## **IV. SHORT ANSWERS**

1. No.
2. No.
3. No.
4. No.
5. No.
6. Yes.

## V. ARGUMENT

### I. The Trial Court Correctly Denied the Motion to Suppress Evidence Found After a Warrantless Canine Sniff.

#### a. The Canine Sniff Was Not a Search.

The appellant argues the use of a canine sniff on the exterior of his car, which was parked in public place, required a search warrant. However, this position is lacking in any legal support. Instead, the relevant caselaw indicates that, under these circumstances, the canine sniff was not a search.

The State agrees that, under some circumstances, a canine sniff may constitute a search that requires a warrant. In State v. Dearman, 92 Wn.App. 630, 635, 962 P.2d 850 (1998), the court found a warrant was required to use a canine sniff on a residence. There, the police were unable to detect the smell of marijuana themselves and used a canine to sniff around the perimeter of the defendant's garage. Dearman, 92 Wn.App. at 632. However, in State v. Wolohan, 23 Wn.App. 813, 598 P.2d 421 (1979), the court had previously held that a canine sniff of a package on a Greyhound bus did not require a warrant because there was no reasonable expectation of privacy in the bus station or the area surrounding the package where the sniff occurred. Similarly, in State v.

Boyce, 44 Wn.App. 724, 726, 723 P.2d 28 (1986), the court ruled that a canine sniff of a safety deposit box at a bank did not require a warrant. The court reached the same conclusion in State v. Stanphill, 53 Wn.App. 623, 630-631, 769 P.2d 861 (1989), where the canine sniffed a package at a post office.

Significantly, the Boyce court stated that “as long as the canine sniffs the object from an area where the defendant does not have a reasonable expectation of privacy, and the canine sniff itself is minimally intrusive, then no search has occurred.” 44 Wn.App. at 730. Indeed, the Dearman court also noted that:

“[W]hen a law enforcement officer is able to detect something by [using] one or more of his senses while lawfully present at the vantage point where those senses are used, that detection does not constitute a ‘search’.” For that reason, courts have held that a police officer’s visual surveillance does not constitute a search if the officer observes an object with the unaided eye from a non-intrusive vantage point. This kind of surveillance does not violate article 1 section 7, because what is *voluntarily exposed to the general public and observable from an unprotected area without using sense enhancement devices is not part of a person’s private affairs.*”

92 Wn.App. at 634. (Emphasis added).

The context of the canine sniff in this case is key. See Boyce, 44 Wn.App. at 729. The only case to date finding a canine sniff to be a search involved a sniff directed at a private residence. Dearman. The other reported cases deal with situation where the sniff was directed at

objects or packages. See Boyce, Stanphill, Wolohan. Highlighting this distinction, the Boyce court observed that “we can envision few situations where a canine sniff of an object would unreasonably intrude into the defendant's private affairs” and thus constitute a search. 44 Wn.App. at 730.

Applying these principles to the instant case, it is clear the use of a canine sniff on the appellant's MR-2 does not constitute a search. The appellant simply had no reasonable expectation of privacy in the odor of marijuana wafting from the open windows of his car that was parked in a public place. 1RP 29-31. This conclusion is even more inescapable when the facts of Boyce are considered.

There, the police obtained permission from a bank to enter a vault and apply a canine sniff to a safety deposit box held by the defendant. The court held this was not a search under the Washington Constitution as it was minimally intrusive and there was no reasonable expectation of privacy. Id. If the use of a canine sniff on a safety deposit box held in a bank vault does not constitute a search, it strains credulity to argue the sniff of a car with its windows down, parked in a public place and reeking of marijuana, is a search. Any reasonable person would have a higher expectation of privacy in the safety deposit box than the car.

Furthermore, Officer Hines was able to detect this odor himself, thus there was no reasonable expectation of privacy as what is “voluntarily exposed to the general public and observable from an unprotected area without using sense enhancement devices is not part of a person's private affairs.” 1RP 31; See Dearman, 92 Wn.App. at 634. Considering this, there was in fact no need to apply for a warrant in order to use the canine sniff in this case. This conclusion is in accord with the long announced principle that “[a]s a general proposition, it is fair to say that when a law enforcement officer is able to detect something by utilization of one or more of his senses while lawfully present at the vantage point where those senses are used, that detection does not constitute a ‘search’.” State v. Seagull, 95 Wn.2d 898, 901, 632 P.2d 44 (1981); quoting 1 W. LaFave, Search and Seizure §2.2, at 240 (1978).

The appellant does not address these cases, but instead simply asserts that the use of a canine sniff must be a search. As can be seen from the preceding authorities, this assumption is unwarranted and incorrect. This Court should uphold the trial court’s decision to deny the search warrant, as the canine sniff at issue was not a search under Washington law.

**b. Even if a Warrant Was Required for the Canine Sniff, an Exception to the Warrant Requirement Applies.**

Even assuming the use of a canine sniff was a search that required a warrant, the evidence would have been inevitably discovered by Officer Hines. Further, the appellant consented to the entry into his vehicle that uncovered the shotgun. As such, even if a warrant was required, there is no basis for suppression.

The doctrine of inevitable discovery applies where “there is a reasonable probability that evidence in question would have been discovered other than from the tainted source.” State v. Winterstein, 140 Wn.App. 676, 692-693, 166 P.3d 1242 (2007); citing State v. Warner, 125 Wn.2d 876, 889, 889 P.2d 479 (1995). Here, if Officer Hines had not requested the use of a drug-sniffing dog, he would have still discovered the shotgun in the MR2. Officer Hines had already smelled the odor of marijuana emanating from the vehicle, and observed what appeared to be flakes of marijuana within the car. This alone was enough for him to obtain a warrant to search the vehicle for controlled substances, which would have resulted in the discovery of the shotgun. The discovery of this weapon was inevitable, regardless of whether the canine sniff was used.

Moreover, the appellant consented to entry into his car. He cannot give the police permission to “take care of” his car, and then complain when they discover contraband while carrying out his request. Consent is a long recognized exception to the warrant requirement. See State v.

Mathe, 102 Wn.2d 537, 688 P.2d 859 (1984). The appellant asked Officer Hines to take care of his MR2, by moving it to prevent it from being towed, and informed the police where the keys could be found. 1RP 28-31. In doing this, the appellant consented to the police entering into his vehicle. Carrying out the appellant's request would have inevitably led to the discovery of the shotgun. See Warner, 125 Wn.2d at 889. There is no basis in the record to justify suppressing the shotgun. This Court should affirm the trial judge's denial of the motion to suppress.

## **II. Trial Counsel Was Not Ineffective for Failing to More Vigorously Argue a Theory Without Basis in Law.**

Trial counsel moved to suppress the pistol found in the apartment and the shotgun found in the Toyota MR2. In the memorandum in support of the suppression motion, trial counsel argued, *inter alia*, that the warrantless use of a drug-sniffing dog was illegal. CP 21-30. The appellant argues trial counsel was ineffective, apparently for failing to pursue this argument with sufficient zeal. To prove this claim, the appellant must show that (1) trial counsel's performance was deficient and (2) this deficiency prejudiced him. State v. Thomas, 109 Wn.2d 222, 225-226, 743 P.2d 816 (1987). Counsel's performance becomes deficient when it falls below an "objective standard of reasonableness." State v. Stenson, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). Thus, to prevail on this

claim, the appellant must show that the trial court would have granted the motion if the issue had been argued more vigorously and that there is a reasonable probability the outcome of the trial would have been different. Stenson, 132 Wn.2d at 707-708.

As argued above, the use of a drug-sniffing dog in this case was not an illegal warrant less search. There is no case law supporting any claim otherwise, and what case law does exist demonstrates the trial court correctly denied the suppression motion. Trial counsel's performance cannot be said to fall below an objective standard of reasonableness for failing to provide non-existent authority in support of his position. Moreover, it is questionable whether an ineffective assistance claim could ever be successfully based on a theory trial counsel's arguments lacked sufficient zeal or vigor. Notwithstanding this question, trial counsel's performance was not deficient, and there is no showing the trial court would have granted the motion if the issue had been argued more strenuously. Trial counsel cannot be held to be ineffective for failing to prevail on a motion where the law was not on his side. While the law requires effective assistance of counsel, it does not, for obvious reasons, guarantee this assistance will be successful. State v. White, 81 Wn.2d 223, 225, 500 P.2d 1242 (1972). The Court should reject the claim of ineffective assistance of counsel as unsupported by the law or the record.

### **III. The Trial Court Correctly Found That Convictions for Count I and III Were Not Double Jeopardy.**

The appellant has been convicted of two crimes against the same victim, Joshua Bryant. Specifically, the appellant was convicted of assault in the second degree and felony harassment. The appellant argues separate convictions for these crimes violates double jeopardy. However, this is incorrect, as these offenses are not the same in law or fact.

The issue in any double jeopardy analysis is whether the legislature intended to impose multiple punishments for the same offense. In re Orange, 152 Wn.2d 795, 815, 100 P.3d 291 (2004). State v. Calle, 125 Wn.2d 769, 776, 888 P.2d 155 (1995). Courts may discern the legislature's purpose by looking to the test set forth in Blockburger v. United States, 284 U.S. 299, 304, 52 S.Ct. 180. 76 L.Ed. 306 (1932). Under Blockburger, “[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” 284 U.S. at 304. Under State v. Reiff, 144 Wn. 664, 667, 45 P. 318 (1896), double jeopardy attaches only if the offenses are identical in both law and fact, which is demonstrated when “the evidence required to support a conviction upon one of them would have been sufficient to

warrant a conviction upon the other.” The “same elements” and “same evidence” tests are largely indistinguishable. Orange, 152 Wn.2d at 816.

Assault in the second degree and felony harassment have different elements. The elements of assault in the second degree, as charged in this case, are: an assault with a deadly weapon. RCW 9A.36.021(1)(c). An assault may consist of an intentional touching that is harmful or offensive; an act performed with the intent to inflict bodily injury but failing, coupled with the apparent present ability to inflict the injury if not prevented; or an act, with unlawful force, done with the intent to create in another apprehension and fear of bodily injury, and which in fact creates in another a reasonable apprehension and imminent fear of bodily injury. 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 35.50 (Supp.2005) (WPIC). A deadly weapon is any device, which under the circumstances in which it is used is readily capable of causing death or substantial bodily injury. RCW 9A.04.110(6).

Thus, to convict the defendant of assault in the second degree, the State had to present evidence that he, using an instrument capable of causing serious injury under the circumstances, intentionally touched Joshua Bryant in an offensive manner, intentionally attempted to injure Joshua Bryant and failed, or intentionally acted in a way to cause Joshua Bryant to fear imminent bodily injury.

Felony harassment, by contrast, consists of a knowing threat to kill another immediately or in the future and words or conduct placing the person threatened in reasonable fear that the threat will be carried out. RCW 9A.46.020(1). A threat is a direct or indirect communication of the intent to cause bodily injury in the future. WPIC 2.24; RCW 9A.04.110(26)(a). Accordingly, to convict the defendant of felony harassment, the State had to present evidence that he knowingly communicated to Joshua Bryant an intent to kill him immediately or in the future and that Joshua Bryant was placed in reasonable fear that the defendant would carry out the threat.

The appellant concedes that under the same evidence test, convictions for both assault in the second degree and felony harassment do not violate double jeopardy. Appellant's brief at 20. The appellant then attempts to argue that these offenses are nonetheless the same and should merge. However, the authorities cited in support of this claim are not persuasive. in In re Personal Restraint of Percer, 150 Wn.2d 41, 75 P.3d 488 (2003), the court noted that:

Although the result of [the same evidence test] is presumed to be the legislature's intent, it is not controlling where there is clear evidence of contrary legislative intent. A court, when searching for evidence of contrary legislative intent, may look at many things, including the statutes' historical development, legislative history, location in the criminal code, or the differing purposes for which they were enacted.

Percer, 150 Wn.2d at 50-51; citing State v. Calle, 125 Wn.2d 769, 888 P.2d 155 (1995). In Percer, the court examined these factors and concluded that separate convictions for vehicular homicide and murder in the second degree did not merge and were not double jeopardy. 150 Wn.2d at 51-54.

Turning to the factors discussed in Percer, a plain language reading of the statutes indicates that the legislature intended to distinguish felony harassment and assault in the second degree as distinct offenses. Threats to injure or kill another, which are insufficient to establish an assault, are specifically criminalized in the harassment statute. Both offenses are set forth in different chapters of the Washington Criminal Code, Title 9A RCW, and address different social concerns. Criminalizing assault addresses concerns about physical harm, while criminalizing harassment is aimed at preventing psychological harm. These differences in aim and purpose, demonstrated in the legislature's establishment of different essential elements, indicate that felony harassment and assault in the second degree do not constitute the same offense for purposes of double jeopardy.

Moreover, the convictions required proof of different facts. To prove assault in the second degree, the State had to show the defendant used a deadly weapon to place Joshua Bryant in fear of bodily injury.

Evidence the defendant used a weapon is unnecessary to prove felony harassment. Similarly, when the defendant threatened to kill Joshua Bryant, this communicated threat was necessary to sustain the conviction for felony harassment, but was not necessary to prove the assault in the second degree. Thus, the same facts do not support both convictions; a distinct fact must be proven to sustain each conviction, both in the abstract and under the facts of this case. Because the evidence required to sustain a conviction on one charge would not have been sufficient to sustain the other, the crimes are not the same offense.

The appellant also argues that the same facts were used to convict him of both crimes. Even if this were the case, it does not violate double jeopardy to convict a defendant for multiple offenses arising out of the same criminal act. Calle, 125 Wn.2d at 782. (upholding convictions for second degree rape and first degree incest arising from a single act of sexual intercourse). What is at issue for purposes of double jeopardy analysis is whether the two charges amount to the same offense. Reiff, 14 Wn. 667-668. Here, the two counts do not amount to the same offense, and separate convictions do not violate double jeopardy. The Court should deny this claim.

Finally, if the Court should be persuaded by the appellant's argument, the proper remedy is not to vacate the conviction for assault in

the second degree. Assault in the second degree is a class B felony, with an offense level of IV. RCW 9A.36.021(2)(a); RCW 9.94A.515. In contrast, felony harassment is a class C felony, with an offense level of III. RCW 9A.46.020(2)(b); RCW 9.94A.515. Considering this, assault in the second degree is the greater offense. The remedy for a double jeopardy violation is to vacate the conviction for the lesser offense, not the greater. State v. Cunningham, 23 Wn.App. 826, 863, 598 P.2d 756 (1979) If the appellant should prevail on this issue, it is the felony harassment conviction that will be vacated.

**IV. The Trial Court Correctly Found the Counts I and III  
Were Not the Same Criminal Conduct.**

“Same criminal conduct” means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. RCW 9.94A.589(1)(a). In the instant case, the assault and the harassment against Mr. Bryant did not occur at the same time. The assault was complete the moment the appellant pointed the sawed-off shotgun at Mr. Bryant. After completing this crime, the appellant then committed the harassment by directing various dire threats to Mr. Bryant. Similarly, the intent was not the same for each crime. The intent for the assault was clearly to overpower and subdue Mr. Bryant at the present time. The intent for the harassment was to terrorize Mr.

Bryant in the future, and perhaps dissuade him from pursuing charges against the appellant. Given this, these offenses are not the same criminal conduct.

Additionally, even if the Court should find counts I and III to be the same criminal conduct, the firearm enhancements would still be consecutive to each other. See State v. Callihan, 120 Wn.App. 620, 85 P.3d 979 (2004); RCW 9.94A.533(3) (“if the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses”). A finding of same criminal conduct will not affect the sentence imposed in this case.

**V. Under RCW 9.94A.525(4), The Trial Court Properly Counted the Appellant’s Prior Conviction for Attempted Assault in the Second Degree as Two Points.**

At sentencing, and on appeal, the appellant argues that his prior conviction for attempted assault in the second degree should have counted

as one point rather than two points.<sup>1</sup> This claim is based on an argument that because attempted assault in the second degree is not a “violent offense” as defined by the SRA, it should not be scored in the same manner as a completed assault in the second degree. However, this argument ignores the statutory scheme and relevant case law.

To date, no published opinion by this Court has addressed this issue.<sup>2</sup> However, the two other divisions of the Court of Appeals have addressed when an attempted violent offense should be scored as two points, the same as a completed violent offense. In State v. Becker, 59 Wn.App. 848, 801 P.2d 1015 (1990), the court held that under former RCW 9.94A.360(5), an attempted violent offense would count for two points. This is the same statute now codified as RCW 9.94A.525(4). See also, State v. Knight, 134 Wn.App. 103, 138 P.3d 1114 (2006), (Division Three adopts the reasoning of the Becker decision.)

The Becker court correctly noted that under the general definitional section of the SRA an attempt to commit a class B violent felony, such as robbery or assault in the second degree, is not a “violent

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<sup>1</sup> To some extent, this argument will have no practical effect on the appellant. The combination of prior convictions and other current offenses will always result in a score of more than 9.

<sup>2</sup> The Court did address the issue in State v. Williams, No. 24623-6-II (2001), but in an unpublished decision.

offense.” Current RCW 9.94A.030(50). However, RCW 9.94A.525, the section entitled “Offender Score,” states in subsection (4):

Score prior convictions for felony anticipatory offenses (attempts, criminal solicitations, and criminal conspiracies) the same as if they were convictions for completed offenses.

The court noted that RCW 9.94A.030(50) and RCW 9.94A.525(4) appeared to be in conflict. 59 Wn.App. at 851-852. However, the court also noted that this conflict was due to a misunderstanding of why an attempted robbery in the second degree would count as two points. The attempted robbery does not count as two points because it is a violent offense. It is not. It counts as two points because it is scored the same as a robbery in the second degree, which is a violent offense. The Becker court further observed the plain language of RCW 9.94A.525(4) requires this result. Id. at 852.

In addition to the plain language of the statute, RCW 9.94A.525(4) is a more recent and specific statute than the general definition found in RCW 9.94A.030(50). As noted by Becker, the more specific and recent law prevails over the older, more general one. Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 36, 785 P.2d 447 (1990). Even aside from this basic principle of statutory construction, the legislative history of RCW 9.94A.525(4) clearly indicates that anticipatory offenses are to be scored the same as completed offenses:

In a memorandum to the Legislature the Commission reiterated that the purpose was to do away with the distinction between attempted and completed offenses when calculating an offender score.

*Count Prior Anticipatory Offenses the Same as Completed Crimes in the Offender Score*

33. Under current law, the Offender Score for specified current offenses (e.g., serious violent, violent, Burglary 1, Burglary 2, Drug) is specifically increased by prior convictions for similar offenses. However, those prior convictions must be for a completed crime, not an anticipatory crime (except in the case of certain Serious Violent felonies). New language is added which directs that for purposes of the Offender Score, prior felony anticipatory crimes count the same as for the completed crime.

Memorandum from Roxanne Park, Executive Officer of Commission to Legislature (January 25, 1985). The amendatory language was approved by the Commission on December 7, 1984. Minutes of Commission, December 7, 1984, Motion 84-403.

Becker, 59 Wn.App. at 854.

The appellant ignores the plain meaning of the statute and the legislative history cited in Becker, and instead argues that the rule of lenity should apply. The flaw in this argument is that the rule of lenity applies does not apply where the statute is unambiguous. State v. Failey, 144 Wn.App. 132, 181 P.3d 875 (2008). The appellant concedes that RCW 9.94A.525(4) is unambiguous. Appellant's brief at 33. As such, the rule of lenity is inapplicable, notwithstanding the appellant's protestations.

Indeed, to accept the appellant's argument would be to make RCW 9.94A.525(4) a nullity. This the Court will not do. State v. Blair, 57 Wn.App. 512, 789 P.2d 104 (1990). The appellant's argument is essentially that it is unfair and inequitable to score anticipatory violent offenses the same as completed violent offenses. Perhaps this argument has some merit. However, this question was decided by the legislature when it enacted RCW 9.94A.525(4). See State v. Larkins, 79 Wn.2d 392, 394, 486 P.2d 95 (1971) (Court would not substitute its wisdom for that of the legislature by finding possession of narcotic "residue" was not a crime.) Given this, the Court should reject the appellant's argument and find that the trial court properly counted the attempted assault in the second degree as two points.

**VI. The State Concedes the No-Contact Order Should Be Amended to Specify Which Charge it Applies To.**

The appellant argues that the ten year no-contact order in this case is defective, as it does not specify which count it applies to.<sup>3</sup> The State concedes that the order is potentially ambiguous in this regard. As such, the State agrees that the issue of the order should be remanded to the trial court. Upon remand, the order may be amended to specify that the ten-

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<sup>3</sup> At times, the appellant's brief refers to the no-contact order as being a "Lifetime" order. The State believes this is simply an oversight, as the actual order is for ten years, and the appellant's brief correctly references this ten-year limitation in other places.

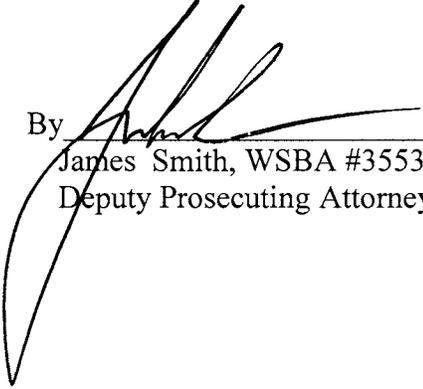
year period apply to the assault in the second degree conviction while the five-year period apply to the other convictions.

## VI. CONCLUSION

Based on the preceding argument, the State respectfully requests the Court to affirm the trial court's denial of the motion to suppress, and to uphold the appellant's convictions. The matter should be remanded to the trial court solely to address the issue of the length of the no-contact order.

Respectfully submitted this 3<sup>rd</sup> day of October, 2008.

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By   
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COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON, )  
)  
Respondent, )  
v. )  
CLINTON ALLEN PRATHER, )  
)  
Appellant. )

NO. 37146-4-II  
07-1-01007-3  
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MICHELLE SASSER, being first duly sworn, on oath deposes and says: That on October 3, 2008, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the following

LISA E. TABBUT  
ATTORNEY AT LAW  
P. O. BOX 1396  
LONGVIEW, WA 98632

COURT OF APPEALS  
950 BROADWAY, SUITE 300  
TACOMA, WA 98402

each envelope containing a copy of the following documents:

1. BRIEF OF RESPONDENT
2. Affidavit of Mailing.

*Michelle Sasser*  
MICHELLE SASSER

SUBSCRIBED AND SWORN to before me this October 3, 2008.

*Nancy C. Westlund*  
Notary Public in and for the State  
of Washington residing in Cowlitz  
Co. My commission expires: 1.3.09

